

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARCUS WARD,

Plaintiff,

JOSEPH STRATTON, et al..

Defendants.

No. 2:20-cv-2083 DB P

ORDER

Plaintiff is a state prisoner proceeding pro se with a civil rights action under 42 U.S.C. § 1983. Before the court is plaintiff's complaint for screening and plaintiff's motion to proceed in forma pauperis. For the reasons set forth below, this court grants plaintiff's motion to proceed in forma pauperis. In addition, this finds plaintiff has stated a cognizable claim against defendant Stratton but has failed to state a claim against defendant Lynch. Plaintiff will be given an opportunity to either amend his complaint or proceed on the cognizable claim in his current complaint.

IN FORMA PAUPERIS

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff will be assessed an initial partial filing fee in

accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

SCREENING

I. Legal Standards

The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or an officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1) & (2).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke, 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully pleaded, has an arguable legal and factual basis. See Franklin, 745 F.2d at 1227. Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).

However, in order to survive dismissal for failure to state a claim a complaint must contain more than "a formulaic recitation of the elements of a cause of action;" it must contain factual allegations sufficient "to raise a right to relief above the speculative level." Bell Atlantic, 550

U.S. at 555. In reviewing a complaint under this standard, the court must accept as true the allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S. 738, 740 (1976), construe the pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor. Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

The Civil Rights Act under which this action was filed provides as follows:

Every person who, under color of [state law] . . . subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution . . . shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. § 1983. The statute requires that there be an actual connection or link between the actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See Monell v. Dept. of Social Servs., 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). "A person 'subjects' another to the deprivation of a constitutional right, within the meaning of § 1983, if he does an affirmative act, participates in another's affirmative acts or omits to perform an act which he is legally required to do that causes the deprivation of which complaint is made." Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978).

II. Analysis

A. Allegations of the Complaint

Plaintiff is incarcerated at Kern Valley State Prison. He complains of conduct that occurred in 2017 when he was incarcerated at California State Prison-Sacramento ("CSP-Sac"). Plaintiff identifies two defendants: Correctional Officer Joseph Stratton and Warden J. Lynch

Plaintiff states that on July 11, 2017, he had a verbal dispute with defendant Stratton as Stratton was escorting him to a cage. When plaintiff placed his arms through the port to have the handcuffs removed, Stratton yanked plaintiff's arm and hand with unnecessary force causing plaintiff injuries. Plaintiff alleges that defendant Lynch failed to adequately supervise Stratton.

Plaintiff seeks a declaratory judgment and compensatory and punitive damages.

B. Does Plaintiff State Cognizable Claims?

Plaintiff has adequately stated a claim for excessive force in violation of the Eighth Amendment against defendant Stratton. Plaintiff's allegations, if true, could show that Stratton

used excessive physical force that was applied “maliciously and sadistically to cause harm” rather than “in a good-faith effort to maintain or restore discipline.” Wilkins v. Gaddy, 559 U.S. 34, 37 (2010) (per curiam) (internal quotation omitted).

Plaintiff does not, however, state a potentially cognizable claim against defendant Lynch. Plaintiff simply alleges that Lynch knew or should have known that plaintiff might be subjected to excessive force and that Lynch failed to adequately supervise and train Stratton. Supervisory personnel are generally not liable under § 1983 for the actions of their employees under a theory of respondeat superior and, therefore, when a named defendant holds a supervisory position, the causal link between him and the claimed constitutional violation must be specifically alleged. See Fayle v. Stapley, 607 F.2d 858, 862 (9th Cir. 1979); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978). Vague and conclusory allegations concerning the involvement of official personnel in civil rights violations are not sufficient. See Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

To show Lynch failed to supervise or train Stratton, plaintiff must state facts showing: (1) that Lynch was responsible for supervising Stratton and for conducting training regarding the use of force; (2) just what Lynch did or did not do, (3) that Lynch knew his actions could cause plaintiff harm, and (4) that the actions did cause plaintiff harm. See Edgerly v. City & Cnty. of S.F., 599 F.3d 946, 962 (9th Cir. 2010) (dismissing supervisory liability claim when no facts “suggest [Sheriff] provided any training to Officers...., or that he was responsible for providing formal training to any officers.”).

CONCLUSION

This court finds above that plaintiff has stated a cognizable claim against defendant Stratton. However, plaintiff fails to state a plausible claim against defendant Lynch.

Plaintiff has a choice. He may proceed on his excessive force claim against Stratton or he may amend his complaint to attempt to also state a claim against defendant Lynch. Plaintiff is warned that in any amended complaint he must include ALL claims he wishes to proceed on in this action.

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1 If plaintiff chooses to file an amended complaint, he must address the problems with his
2 complaint that are explained above. Plaintiff is advised that in an amended complaint he must
3 clearly identify each defendant and the action that defendant took that violated his constitutional
4 rights. The court is not required to review exhibits to determine what plaintiff's charging
5 allegations are as to each named defendant. If plaintiff wishes to add a claim, he must include it
6 in the body of the complaint. The charging allegations must be set forth in the amended
7 complaint so defendants have fair notice of the claims plaintiff is presenting. That said, plaintiff
8 need not provide every detailed fact in support of his claims. Rather, plaintiff should provide a
9 short, plain statement of each claim. See Fed. R. Civ. P. 8(a).

10 Any amended complaint must show the federal court has jurisdiction, the action is brought in
11 the right place, and plaintiff is entitled to relief if plaintiff's allegations are true. It must contain a
12 request for particular relief. Plaintiff must identify as a defendant only persons who personally
13 participated in a substantial way in depriving plaintiff of a federal constitutional right. Johnson v.
14 Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (a person subjects another to the deprivation of a
15 constitutional right if he does an act, participates in another's act or omits to perform an act he is
16 legally required to do that causes the alleged deprivation). "Vague and conclusory allegations of
17 official participation in civil rights violations are not sufficient." Ivey v. Bd. of Regents, 673 F.2d
18 266, 268 (9th Cir. 1982) (citations omitted).

19 In an amended complaint, the allegations must be set forth in numbered paragraphs. Fed. R.
20 Civ. P. 10(b). Plaintiff may join multiple claims if they are all against a single defendant. Fed. R.
21 Civ. P. 18(a). If plaintiff has more than one claim based upon separate transactions or
22 occurrences, the claims must be set forth in separate paragraphs. Fed. R. Civ. P. 10(b).

23 The federal rules contemplate brevity. See Galbraith v. County of Santa Clara, 307 F.3d
24 1119, 1125 (9th Cir. 2002) (noting that "nearly all of the circuits have now disapproved any
25 heightened pleading standard in cases other than those governed by Rule 9(b)"); Fed. R. Civ. P.
26 84; cf. Rule 9(b) (setting forth rare exceptions to simplified pleading). Plaintiff's claims must be
27 set forth in short and plain terms, simply, concisely and directly. See Swierkiewicz v. Sorema

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1 N.A., 534 U.S. 506, 514 (2002) (“Rule 8(a) is the starting point of a simplified pleading system,
2 which was adopted to focus litigation on the merits of a claim.”); Fed. R. Civ. P. 8.

3 An amended complaint must be complete in itself without reference to any prior pleading.
4 E.D. Cal. R. 220. Once plaintiff files an amended complaint, the original pleading is superseded.
5 By signing an amended complaint, plaintiff certifies he has made reasonable inquiry and has
6 evidentiary support for his allegations, and for violation of this rule the court may impose
7 sanctions sufficient to deter repetition by plaintiff or others. Fed. R. Civ. P. 11.

8 For the foregoing reasons, and good cause appearing, IT IS HEREBY ORDERED as
9 follows:

- 10 1. Plaintiff’s motion to proceed in forma pauperis (ECF No. 5) is granted.
- 11 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff is
12 assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. §1915(b)(1).
13 All fees shall be collected and paid in accordance with this court’s order to the California
14 Department of Corrections and Rehabilitation filed concurrently herewith.
- 15 3. Plaintiff has stated a cognizable Eighth Amendment claim against defendant Stratton.
- 16 4. Plaintiff’s claim against defendant Lynch is dismissed with leave to amend.
- 17 5. Plaintiff may choose to proceed on his cognizable claim set out above or he may choose
18 to amend his complaint.
- 19 6. Within thirty (30) days of the date of this order, plaintiff shall fill out and return the
20 attached form indicating how he would like to proceed in this action.
- 21 7. Plaintiff is warned that his failure to comply with this order may result in a
22 recommendation that this action be dismissed.

23 Dated: January 29, 2021

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26 DLB:9/DLB1/prisoner-civil rights/ward2083.scrn lta or proceed

DEBORAH BARNES
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

MARCUS WARD,

Plaintiff,

v.

J. STRATTON, et al.,

Defendants.

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PLAINTIFF'S NOTICE ON HOW TO
PROCEED

Check one:

_____ Plaintiff wants to proceed immediately on his claim in the complaint for excessive force in violation of the Eighth Amendment against defendant Stratton. Plaintiff understands that by going forward without amending the complaint he is voluntarily dismissing all other claims.

_____ Plaintiff wants to amend the complaint.

DATED: _____

Plaintiff Marcus Ward